

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 75-6130

In The  
**United States Court of Appeals**  
For The Second Circuit

B

P/S

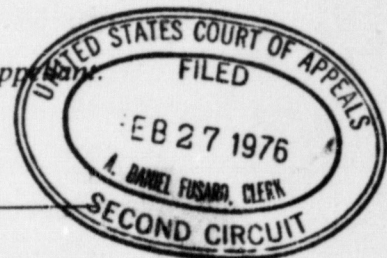
SECURITIES AND EXCHANGE COMMISSION,

*Plaintiff-Appellee,*

- against -

CANADIAN JAVELIN LIMITED,

*Defendant-Appellant.*



## APPELLANT'S APPENDIX

DIAMOND & GOLOMB, P. C.  
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New York, New York 10016  
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and

MOSES KRISLOV  
Engineers Building  
Cleveland, Ohio  
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Canadian Javelin Limited*

(9258)

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## TABLE OF CONTENTS

	Page
Docket Entries . . . . .	A1
Order to Show Cause (Dated December 17, 1975) . . . . .	A4
Motion of Securities Exchange Commission to Require Defendant to Appoint Counsel and Pay Counsel Fees (Filed December 18, 1975) . . . . .	A5
Affidavit of Wallace L. Timmeny in Sup- port of Motion . . . . .	A9
Affidavit of Meyer Eisenberg in Support of Motion . . . . .	A12
Affidavit of Harris S. Ammerman in Sup- port of Motion . . . . .	A14
Exhibits Annexed to Foregoing Affidavit:	
A — Summons of Supreme Court of On- tario in Smith v. Canadian Javelin Limited, Securities and Exchange Commission, and Meyer Eisenberg. . .	A18
A — Notice for Service out of Ontario . .	A19
A — Statement of Claim . . . . .	A20

## Contents

	Page
B — Judgment of U. S. District Court in Securities Exchange Commission v. Canadian Javelin Limited . . . . .	A33
B — Consent . . . . .	A42
B — Endorsed Decision of District Court .	A46
Securities Exchange Commission Memor- andum of Points and Authorities (Filed December 19, 1975) . . . . .	A47
Motion by Canadian Javelin For Stay (Fi- led December 19, 1975) . . . . .	A50
Affidavit of Irving L. Golomb in Opposi- tion (Dated December 19, 1975) . . . . .	A51
Canadian Javelin's Memorandum of Points in Opposition (Filed December 19, 1975) .	A62
Order of District Court (Filed December 19, 1975) . . . . .	A64
Notice of Appeal (Dated December 19, 1975) .	A66



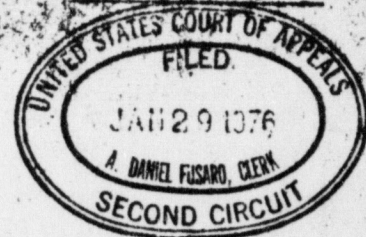
# DOCKET ENTRIES

SECURITIES AND EXCHANGE COMM.

73 Civ 3074

CANADIAN JAVELIN LTD. et al

JUDGE MacMahon



## EXTRACT OF DOCKET ENTRIES

- Jan. 13-75 Filed deft (Javelin's) affirmation & Show Cause Order with a stay enjoining the S.E.C. from permitting the sales of Javelin shares pending the development of a program for orderly trading etc. Ret. 1-24-75, Rm. 1305, at 2:15 P.M. (Service not rec'd to date) MAC MAHON, J.
- Jan. 15-75 Filed affv of service of Order to Show Cause with a Stay.
- Jan. 17-75 Filed pliffs notice of motion to dissolve portion of order of 1-13-75, which stays proceedings re sale in U.S. of securities of Canadian Javelin. Ret. 1-21-75.
- Jan. 21-75 Filed Memo-End. on motion of 1-17-75. Motion withdrawn by Stip.....MAC MAHON, J. m/n
- Jan. 21-75 Filed Stip & Order re Order enjoining S.E.C. etc. as indicated, & parties agreeing such Order is no longer necessary, said Order is vacated forthwith & motion is withdrawn, without costs.....MAC MAHON, J.
- Jan. 30-75 Filed Memo-End. on proof of service dated 1-15-75. Motion within by Stip & Order of 1-21-75.....MAC MAHON, J. m/n
- Jan. 30-75 Filed Memo-End. on show cause order of 1-13-75. Motion within by Stip & Order of 1-21-75.....MAC MAHON, J. m/n
- Jan. 27-75 Filed notice that original record on appeal has been Certified & transmitted to the USCA.
- 12-18-75 Filed pliffs affdvt & Show Cause Order to require deft to Appoint Counsel & to pay Counsel fees & expenses re Judgment of Permanent Injunction against Canadian Javelin by order of the Court dtdt 7-17-74. Ret. 12-19-75, Rm 1305, 2:15 P.M.

12-18-75 Filed pliffs memo of points & authorities in support of motion for  
for an order to appoint counsel & to pay counsel's fees & ex  
expenses.

12-19-75 Filed deft (Canadian J.) notice of motion to stay judgment & Order  
ent. 12-19-75, pending appeal. Time & date to be set by Court

12-19-75 Motion granted. Submit (leave) decision to stay, so that  
appeal be taken.

12-19-75 Filed deft (Canadian Javelin's) Notice of Appeal to the USCA from  
the order of Judge MacMahon, entering certain orders to this  
deft on the 19th day of December, 1975. Copy sent to the  
S.E.C. 500 North Capitol St. Washington, D.C.

12-19-75 Filed deft (Canadian J.) affdvt in opposition to pliffs motion re  
counsel fees & expenses.

12-19-75 Filed deft (Canadian J) memo of points in opposition to motion.

12-19-75 Filed pliffs memo of points & authorities in support of motion for  
an order to appoint counsel & pay counsel's fees & expenses.

12-19-75 Filed Memo-End. on motion of 12-18-75. Motion granted following  
oral argument. See long form order of this date on the basis  
of the following Findings of Fact & Conclusions of Law.

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
12-18-75	Smith has commenced an action in Ontario requesting Canadian Court to declare portions of our injunctive decree of 7-17-74 null & void & not binding on Canadian Javelin, its officers, etc. Our decree was entered on consent of Canadian Javelin, & they must therefore defend the decree against collateral attack in the Canadian Court. Since we retained juris- diction, it is essential to direct Canadian J. to appoint Eisenberg as its counsel to defend the decree & pay him reasonable fees & expenses. Eisen- berg was appointed special counsel by the Bd. of Dir. of Canadian J. & is unio- qualified to defend the decree. The matter is urgent since the Canadian action will be before the Court on 12-22-75.....So Ordered, MAC MAHON, J			
12-19-75	Filed Order & Decree that Canadian Javelin appoint Meyer Eisenberg to appear & defend on behalf of Canadian J., & to protect the subject matter of this case, & to retain Canadian counsel qualified to represent them in connection with Smith vs Canadian J., et al.			



Canadian J. to pay fees & expenses in an amount to be fixed by this court of Eisenberg & his counsel re the defense of the case pending in the Supreme Court of Ontario. This Court to retain jurisdiction of this matter for all purposes.....MAC MAHON, J m/n  
Judgment Entered, 12-23-75, Clerk

12-29-75 Filed Memo-End. on motion of 12-19-75 for a stay. Treating the within motion as one for reargument of this Court's decision from the bench denying debt (Canadian's motion for a stay pending appeal from order of 12-19-75, the motion is granted, & upon reargument the Court adheres to its decision denying the stay. The granting of even a short stay would frustrate the Court's order directing (Canadian) to retain Mr. Eisenberg to defend (Canadian) in a suit brought in Canada for the purpose of undermining an earlier consequence decree of this Court.....So Ordered, MAC MAHON, J m/n

A TRUE COPY  
RAYMOND F. BURCHARDT, Clerk  
By E. J. [Signature]  
Deputy Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CANADIAN JAVELIN LIMITED  
JOHN C. DOYLE  
WILLIAM M. WISMER,

Defendants.

:  
:  
: 73 Civil 5074 LFM  
:  
: ORDER TO SHOW CAUSE  
: TO APPOINT COUNSEL  
: AND TO PAY COUNSEL'S  
: FEES AND EXPENSES  
:  
:

On motion of the Securities and Exchange Commission and upon the annexed affidavit of Wallace L. Timmeny and all other documents filed herein, it is

ORDERED that Defendant Canadian Javelin Limited show cause to Judge Lloyd F. McMahon of this Court at 215 o'clock P.m. on December 19, 1975 in Room 1305, of the United States Courthouse, Foley Square, New York, why, pursuant to the provisions of the Judgment of Permanent Injunction against Canadian Javelin entered by this Court on July 17, 1974, the attached motion of the Securities and Exchange Commission to Require Defendant to Appoint Counsel and to Pay Counsel Fees and Expenses should not be granted; and it is further

ORDERED that <sup>PERSONAL</sup> service of this order shall be effected upon Irving L. Galomb, as counsel for Canadian Javelin and as authorized agent for service, on or before 12 o'clock noon.m., December 18, 1975.

101  
UNITED STATES DISTRICT JUDGE

Dated: New York, New York  
December 17, 1975



MOTION OF SECURITIES EXCHANGE COMMISSION TO REQUIRE DEFENDANT TO  
APPOINT COUNSEL AND PAY COUNSEL FEES (Filed December 18, 1975)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CANADIAN JAVELIN LIMITED  
JOHN C. DOYLE  
WILLIAM M. WISMER,

Defendants.

---

:

: 73 Civil 5074 LFM

: MOTION OF SECURITIES  
AND EXCHANGE COMMISSION  
: TO REQUIRE DEFENDANT  
TO APPOINT COUNSEL AND  
: TO PAY COUNSEL'S FEES  
AND EXPENSES

---

:

:

The Securities and Exchange Commission ("SEC") moves this Court to require Canadian Javelin, Limited, to appoint Meyer Eisenberg, Esquire, counsel to appear and defend Canadian Javelin, Limited, and to pay all counsel's fees and expenses in the matter of Harold W.M. Smith v. Canadian Javelin Limited, Securities and Exchange Commission, and Meyer Eisenberg, an action brought by plaintiff Smith in the Supreme Court of Ontario. (See attached affidavit of Harris Ammerman.)

Harold W.M. Smith, a shareholder and a director of Canadian Javelin Limited, has filed an action in the Supreme Court of Ontario requesting that Court to declare, among other

things, that portions of an injunctive decree entered by this Court on July 17, 1974 in Securities and Exchange Commission v. Canadian Javelin Limited, Jonn C. Doyle, and william M. wismer, 73 Civil 5074 LFM, were null, void, illegal and not binding upon Canadian Javelin Limited, its officers, servants, directors, shareholders, successors and assigns.

In support of his claim for relief in the Ontario Court, plaintiff Smith asserts, among other things, that the resolution of the board of directors of Canadian Javelin authorizing a consent to a permanent injunction and the attendant consent were "illegal, ultra vires, null, void," etc., because the resolution and consent:

- (1) interfered with the rights of shareholders to freely elect directors pursuant to the by-laws of Canadian Javelin;
- (2) were not confirmed by a special meeting;
- (3) amended the By-laws of Canadian Javelin without consent of the shareholders; and
- (4) constituted a mandatory delegation of the powers and duties of directors and officers of Canadian Javelin to special counsel Meyer Eisenberg.

Plaintiff Smith cites provisions of the Canada Corporations Act (R.S.C., 1970 Chapter C-32) in support of his claim. The SEC moves for an order requiring Canadian Javelin Limited to appoint Eisenberg to defend Canadian Javelin in the Supreme Court of



Ontario in light of Eisenberg's affidavit stating he had been informed that Canadian Javelin would instruct its counsel not to take any position before the Ontario Court. (See attached affidavit of Meyer Eisenberg, Esq.)

Since Canadian Javelin consented to the contested decree entered by this Court, presumably with knowledge of Canadian corporate law, it is reasonable to require Canadian Javelin to appoint counsel to defend its consent against collateral attack in the Ontario Court. Furthermore, since Canadian Javelin consented to the continuing jurisdiction of this court in the captioned action and since the consent decree in that action authorizes such further relief as is necessary, it is clearly within the discretion of this court to appoint counsel to defend a collateral attack on the consent decree and to require Canadian Javelin to pay Eisenberg's fees and expenses.

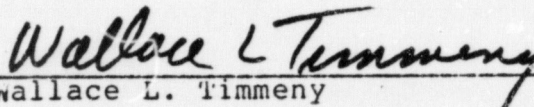
Counselor Eisenberg, appointed special counsel by the board of directors of Canadian Javelin, in compliance with the consent decree, is uniquely qualified to represent Canadian Javelin in the Ontario Court. He has effectively pursued his responsibilities pursuant to the consent decree.

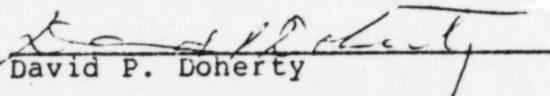
Wherefore, the Securities and Exchange Commission prays that the Court grant its motion to require Canadian Javelin

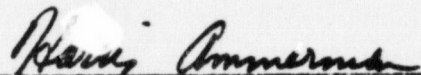
A8

to appoint Eisenberg to defend Canadian Javelin in the Ontario Court and to require Canadian Javelin to pay Eisenberg fees and expenses in connection therewith.

Respectfully submitted,

  
wallace L. Timmeny

  
David P. Doherty

  
Harris Ammerman

Attorneys for Plaintiff  
Securities and Exchange Commission  
500 North Capitol Street  
Washington, D.C. 20549

William D. Moran  
Regional Administrator  
New York Regional Office  
Securities and Exchange Commission  
26 Federal Plaza  
New York, New York 10007

Dated: Washington, D.C.  
December 17, 1975



AFFIDAVIT OF WALLACE L. TIMMENY IN SUPPORT OF MOTION  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

A9

SECURITIES AND EXCHANGE COMMISSION :  
\_\_\_\_\_ :

Plaintiff, :

73 CIVIL 5074 LFM

- against - :

AFFIDAVIT IN SUPPORT  
OF ORDER TO SHOW CAUSE

CANADIAN JAVELIN LIMITED :

JOHN C. DOYLE :

WILLIAM M. WISMER :

Defendants. :

\_\_\_\_\_  
WALLACE L. TIMMENY, first being duly sworn, deposes and says:

1. I am an attorney employed by the U.S. Securities and Exchange Commission ("SEC") in its Division of Enforcement in Washington, D.C. I make this affidavit in support of the motion of the SEC to require Canadian Javelin Limited to authorize special counsel to appear and defend Canadian Javelin, a defendant in the matter of Harold W.M Smith, plaintiff, and Canadian Javelin Limited, Securities and Exchange Commission, and Meyer Eisenberg, defendants. Plaintiff Smith has instituted the foregoing action in the Supreme Court of Ontario.

2. Counsel for plaintiff Smith has informed the SEC that the Ontario Supreme Court will be moved on December 22, 1975, for, among other things, an interim order restraining and prohibiting Canadian Javelin Limited and others from complying with certain portions of a decree entered by this Court in Securities and Exchange Commission v. Canadian Javelin Limited, et al., 73 Civil 5074 LFM (July 17, 1974).

Since a hearing in the Ontario court appears to be scheduled on December 22, 1975, the attached motion of the SEC is brought on by order to show cause because there is insufficient time to proceed by notice of motion.

- (1) interfered with the rights of shareholders to freely elect directors pursuant to the by-laws of Canadian Javelin;
- (2) were not confirmed by a special meeting;
- (3) amended the By-laws of Canadian Javelin without consent of the shareholders; and
- (4) constituted a mandatory delegation of the powers and duties of directors and officers of Canadian Javelin to special counsel Meyer Eisenberg.

Plaintiff Smith cites provisions of the Canada Corporations Act (R.S.C., 1970 Chapter C-32) in support of his claim. The SEC moves for an order requiring Canadian Javelin Limited to appoint Eisenberg to defend Canadian Javelin in the Supreme Court of Ontario in light of Eisenberg's affidavit stating he had been informed that Canadian Javelin would instruct its counsel not to take any position before the Ontario Court. (See attached affidavit of Meyer Eisenberg, Esq.)

Since Canadian Javelin consented to the contested decree entered by this Court, presumably with knowledge of Canadian corporate law, it is reasonable to require Canadian Javelin to appoint counsel to defend its consent against collateral attack in the Ontario Court. Furthermore, since Canadian Javelin consented to the continuing jurisdiction of this court in the captioned action and since the consent decree in that action authorizes such further relief as is necessary, it is clearly within the discretion of this Court to appoint counsel to defend a collateral attack on the consent decree and to require Canadian Javelin to pay Eisenberg's fees and expenses.

Counselor Eisenberg, appointed special counsel by the board of directors of Canadian Javelin, in compliance with the consent decree, is uniquely qualified to represent Canadian Javelin in the Ontario Court. He has effectively pursued his responsibilities pursuant to the consent decree.



A11

3. WHEREFORE, it is respectfully requested that the ORDER TO SHOW CAUSE to which this affidavit is attached be signed and entered by the Court.

Wallace L. Timmeny  
WALLACE L. TIMMENY  
Attorney  
U.S. Securities and Exchange  
Commission  
500 North Capitol Street  
Washington, D.C. 20549

Subscribed and Sworn to before me  
this 17 day of December, 1975.

Daniel M. Carbin  
NOTARY PUBLIC

My Comm. expires 12-31-1975

AFFIDAVIT OF MEYER EISENBERG IN SUPPORT OF MOTION  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

A12

SECURITIES AND EXCHANGE COMMISSION	)	
	)	
Plaintiff	)	
	)	
v.	)	73 Civ. 5074
	)	
CANADIAN JAVELIN, LTD.	)	<u>AFFIDAVIT</u>
JOHN C. DOYLE	)	
WILLIAM M. WISMER	)	
	)	
Defendants	)	

DISTRICT OF COLUMBIA, SS:

Meyer Eisenberg, being duly sworn deposes and says:

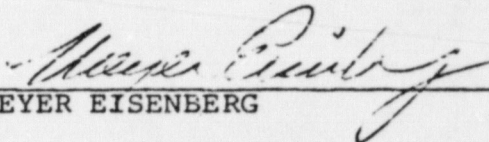
1. I am Special Counsel to the Compliance Committee of Canadian Javelin, Ltd. ("Company") appointed pursuant to Paragraph 7 of the stipulated order and consent in Securities and Exchange Commission v. Canadian Javelin, Ltd., John C. Doyle and William M. Wismer, 73 Civ. 5074, S.D.N.Y., dated July 17, 1974.

2. On December 3, 1975, we received a copy of an action filed in the Supreme Court of Ontario titled Harold W. M. Smith v. Canadian Javelin, Ltd., Securities and Exchange Commission and Meyer Eisenberg, in which action a director of Canadian Javelin seeks, among other things, to have declared void and ultra vires much of the relief, including the appointment of special counsel, consented to and ordered by this Court in SEC v. Canadian Javelin, Ltd., supra. A motion for preliminary injunction in the Ontario action has been noticed for December 22, 1975.

3. I have been informed by Julius Mallin, Secretary of the Company, that the Company was considering what action it will take in response to the Ontario lawsuit. I have been informed that the firm of Day, Campbell & Wilson of Toronto, Ontario, has been retained to represent the Company in the Ontario action, but I understand that they have not yet been instructed by the Company as to what their posture should be before the Court on the hearing. Mr. Mallin

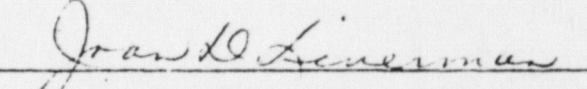


indicated that it was probable that counsel for the Company would be instructed not to take any position before the Ontario Court. I informed Mr. Mallin that it was my initial position to contest the action and that I had taken steps to retain Ontario counsel. I also requested the Company to pay the costs of such defense. Mr. Mallin indicated that he would contact the plaintiff in the Ontario action with a view toward obtaining our dismissal from that action. It is my understanding pursuant to a letter from Jonathan Robinson, Esq., Montreal, Canada, the Company's counsel, dated December 12, 1975, that the Company has not yet reached any specific conclusion as to whether it will reimburse us for legal and other expenses incurred in connection with the defense of the Ontario action. The letter also indicates that no instructions have yet been issued to Day, Campbell & Wilson as to the Company's position.

  
MEYER EISENBERG

Subscribed and sworn to before me  
this 17 day of December, 1975.

Lawler, Kent & Eisenberg  
1156 Fifteenth St., N.W.  
Washington, D.C. 20005

  
My com. expires: 8/31/77

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

- against -

CANADIAN JAVELIN LIMITED  
JOHN C. LOYLE  
WILLIAM M. WISMER

Defendants.

73 CIVIL 5074 LFM

AFFIDAVIT IN SUPPORT  
OF MOTION TO APPOINT  
COUNSEL AND TO PAY  
COUNSEL'S FEES AND  
EXPENSES

HARRIS S. AMMERMAN, being duly sworn, deposes and says:

1. I am an attorney with the Securities and Exchange Commission, Division of Enforcement.

2. On November 29, 1973 the Securities and Exchange Commission filed a complaint in the United States District Court for the Southern District of New York against Canadian Javelin Limited, William M. Wismer of Montreal, Canada, Canadian Javelin's president, and John C. Doyle, Montreal and Panama City, Panama, Canadian Javelin's Chairman of the Executive Committee of the Board of Directors and controlling stockholder.

3. On July 17, 1974 the Honorable Lloyd F. McMahon, United States District Judge, Southern District of New York, entered final judgments of permanent injunction against Canadian Javelin Limited and John C. Doyle enjoining them from violations of the anti-fraud and reporting provisions of the federal securities laws and enjoining them from violation of the registration provisions of the Securities Act of 1933. In addition, the Court ordered a stipulation



to be entered against William M. Wismer, ordering him not to violate the anti-fraud and reporting provisions of the federal securities laws and from violating the registration provisions of the Securities Act of 1933.

4. The defendants consented to the entry of these final Judgments and Order pursuant to a resolution by the defendants' Board of Directors signed on May 29, 1974 without admitting or denying the allegations contained in the Commission's complaint.

5. The judgments entered by the court provided, among other things:

- (a) that the board of directors of Javelin shall consist of at least 40% outside independent directors who shall meet certain criteria satisfactory to the Commission;
- (b) that Javelin shall name a special outside counsel satisfactory to the Commission. Special Counsel shall review the dissemination of all information to the public by Javelin or any of its subsidiaries, its officers and directors, and shall be authorized to take all reasonable steps to secure Javelin's compliance with the U.S. securities laws and shall make such inquiries as he deems necessary to see to it that this Judgment is being carried out. Special Counsel shall notify the Commission and Javelin's Board of Directors in any respect in which he believes the Judgment is not being carried out and advise the Board as to the steps necessary to cure such failure. Special Counsel cannot be removed except on notice in writing stating the reasons for the removal prior to the removal of the special counsel;
- (c) that in the event that the Commission brings suit in the United States, or otherwise initiates any action to enforce compliance with the Judgment, Special Counsel shall:
  - (1) make a demand on the company's Board of Directors to take, in Canada whatever steps they deem appropriate under Canadian law to enforce compliance with such Judgment; and

(2) bring the matter to the attention of the authorities in Canada having jurisdiction for such action as may be appropriate and warranted under the circumstances;

(d) that Javelin shall designate and at all times maintain and agent in the United States authorized to accept service of civil or administrative process relating to the activities of Javelin, its subsidiaries and affiliates, served by or on behalf of the Commission including subpoenas and complaints.

6. With respect to subparagraph (d) above which refers to an authorized agent to accept service, we are advised that Irving L. Golomb, Esquire whose address is 99 Park Avenue, New York, New York (10016) is legal counsel for Canadian Javelin Limited and therefore fulfills the above-described service requirement.

7. Pursuant to the Judgment, a Compliance Committee was established and Meyer Eisenberg, a Washington, D.C. attorney, was appointed Special Counsel by the Board of Directors of Canadian Javelin Limited.

8. In addition the judgment provides that "the Commission may at any time apply to the Court for appropriate relief to enforce the terms of this Judgment."

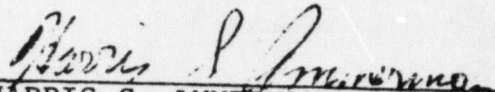
9. On November 3, 1975 a lawsuit was filed in the Supreme Court of Ontario, Canada (a copy of which is attached hereto as Exhibit A) by Harold W. M. Smith, plaintiff against Canadian Javelin Limited, Securities and Exchange Commission and Meyer Eisenberg. The Plaintiff (Smith) is a director and shareholder of Canadian Javelin Limited. The complaint pleads that the resolution of the Board of Directors, Consent and the provisions for ancillary relief recited in this Court's final Judgments and Order are illegal, ultra vires, null, void and of no effect insofar as they purport to bind Canadian Javelin, its officers servants, directors, agents



A17

Judgment of Permanent Injunction against Canadian Javelin Limited and Stipulation and Consent with respect thereto)

9. No prior application has been made for the relief requested herein.

  
HARRIS S. AMMERMAN  
Attorney  
U.S. Securities and Exchange  
Commission  
500 North Capitol Street  
Washington, D.C. 20549

Subscribed and Sworn to before me  
this 17<sup>th</sup> day of December, 1975

  
NOTARY PUBLIC

My Commission Expires Dec. 31, 1976

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT



EXHIBIT A - SUMMONS OF SUPREME COURT OF ONTARIO IN SMITH  
V. CANADIAN JAVELIN LIMITED, SECURITIES AND EXCHANGE  
COMMISSION, AND MEYER EISENBERG

A18

Doc. 2, Duchon Co. 1600  
Form No. 251, 1974

7217 A.D. 1975

In the SUPREME Court of ONTARIO  
Between

HAROLD W. M. SMITH

PLAINTIFF

AND

CANADIAN JAVELIN LIMITED, SECURITIES  
AND EXCHANGE COMMISSION, AND MEYER  
EISENBERG

DEFENDANTS

TO SECURITIES AND EXCHANGE COMMISSION,  
Washington D.C., U. S.A.

MEYER EISENBERG,  
Washington D.C., U. S. A.

Take Notice that the plaintiff has issued a Writ of Summons in this Court against you for the relief set out in the Statement of Claim served herewith;

And Take Notice that you are served with this Notice pursuant to the provisions of Rule 25(1) (b); (i), (n) and (o);

And Take Notice that, if you wish to defend this action, either you or an Ontario lawyer on your behalf shall file an Appearance and serve upon the plaintiff or his lawyer AND file your Statement of Defence in the office of this Court at Central Office, 145 Queen ST. W., Toronto, within the time hereinafter stated:

Where you are served out of Ontario but elsewhere in Canada or within one of the United States of America, within forty days after service on you of this Notice; or

Where you are served elsewhere than in Canada or one of the United States of America, within sixty days after service on you of this Notice;

And Take Notice that if you fail to do so, pleadings may be noted closed against you and you may not be permitted to deliver your Statement of Defence.

And Take Notice that, where pleadings have been noted closed against you, you may be deemed to have admitted the plaintiff's claim and you may not be entitled to notice of any motion for judgment or notice of trial, AND JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

Dated at Toronto this 3rd day of November 19 75

(Signed) *Walter Thompson Redwood Lewis & H.*

Solicitors for Harold W. M. Smith

EXHIBIT A - NOTICE FOR SERVICE OUT OF ONTARIO

A19

No. 7219

A.D. 1975

In the Supreme Court of Ontario

ACTION COMMENCED IN THE JUDICIAL  
DISTRICT OF YORK

HAROLD W. M. SMITH

VS.

CANADIAN JAVELIN LIMITED,  
SECURITIES AND EXCHANGE  
COMMISSION AND MEYER EISENBERG

Notice for Service  
Out of Ontario

GENERAL FORM

Dye & Durham Co. Limited

The Writ in this action was issued by  
MILLER, THOMSON, SEDGEWICK,  
LEWIS & HEALY

of the City of Toronto  
in the Judicial District of York

Solicitors for the said Plaintiff

who reside at  
Vineland Station, Ontario.

MILLER THOMSON  
SEDEWICK LEWIS & HEALY  
21 King Street East  
Toronto Ontario  
M5C 1A9

PLAINTIFF'S SOLICITOR



IN THE SUPREME COURT OF ONTARIO  
EXHIBIT A - STATEMENT OF CLAIM

A20

BETWEEN :

HAROLD W. M. SMITH

Plaintiff

- and -

CANADIAN JAVELIN LIMITED, SECURITIES  
AND EXCHANGE COMMISSION, and MEYER  
EISENBERG

Defendants

STATEMENT OF CLAIM

(Writ issued the 3rd day of November, 1975)

1. The plaintiff is a director and shareholder of Canadian Javelin Limited residing in the Province of Ontario in the Judicial District of Niagara North.

2. The defendant Canadian Javelin Limited (hereinafter referred to as "Canadian Javelin") is a public corporation incorporated by letters patent issued pursuant to the laws of Canada having its head office at the City of Montreal in the Province of Quebec and maintaining a branch register of transfer of shares in its capital stock in the City of Toronto. Certain of the directors of the said defendant reside in the Province of Ontario wherein, from

A21

time to time, meetings of its Board of Directors take place.

3. The defendant Securities And Exchange Commission (hereinafter referred to as "SEC") is an agency of the Government of the United States of America capable of suing and being sued and maintaining its principal office at the City of Washington in the District of Columbia within the United States of America.

4. The defendant Meyer Eisenberg (hereinafter referred to as, "Eisenberg") is an attorney at law carrying on the practice of his profession at the said City of Washington.

5. In the year 1973, the defendant SEC commenced a civil action in the United States District Court Southern District of New York bearing number 5074 for 1973 in which the defendant Canadian Javelin, John C. Doyle and William M. Wismer were defendants alleging, inter alia, breaches of the Securities Act of 1933 and the Securities Exchange Act of 1934, being legislation of the United States of America.

6. On July 17th, 1974 Mr. Justice McMahon of the said United States District Court granted a judgment against Canadian Javelin in the nature of a Final Judgment of



Permanent Injunction enjoining the defendant Canadian Javelin Limited, inter alia, by sections I, II and III thereof from engaging in unlawful acts, dealing in securities other than in compliance with the Securities Act of 1933, 15 U.S.C. 77E and from filing misleading materials contrary to the Securities Exchange Act, all of which are more particularly set out in the said judgment to which the plaintiff prays leave to refer to at the trial herein.

7. By section IV of the said judgment, the said judgment ordered that:

1. The Board of Directors by causing Javelin to enter into this Judgment shall be fully and continuously responsible for carrying it out.

2. Javelin will be subject to the continuing jurisdiction of the Court with respect to this Judgment.

3. The management of Javelin shall propose directors, vote their shares, and shall solicit proxies for the election of directors, at least 40 percent of whom shall consist of outside independent directors who shall meet the following criteria to the satisfaction of the Commission:

- (a) persons of integrity;
- (b) persons not employed by Javelin or any of its subsidiaries or affiliates;
- (c) persons not under the control of Javelin or any of its subsidiaries

or affiliated in consequence of any significant business interest;

- (d) persons who are not presently officers of Javelin;
- (e) persons not presently controlled by those owning the controlling voting interest in Javelin.

4. Javelin, its officers and directors, by action of the Board of Directors, shall designate and at all times maintain an agent in the United States authorized to accept service of civil or administrative process relating to the activities of Javelin, its subsidiaries and affiliates, served by or on behalf of the Commission including subpoenas and complaint. Javelin shall at all times advise the Commission of the name and address of such agent. Anyone so served shall retain any defenses he or it may have under the law to such action, except lack of proper service.

5. All dissemination of information by Javelin or any of its subsidiaries to the public whether by means of press releases, reports, letters to shareholders, filings with regulatory agencies, press conferences, meetings with security analysts, or otherwise shall be made only through a public information officer of Javelin designated within thirty days of this Judgment for such purpose. No other officer or employee of Javelin shall engage in any such dissemination of information.

6. Javelin shall establish within thirty days of this Judgment a standing compliance committee. A majority of the standing committee shall consist of independent Board members meeting the requirements of paragraph 3 of this



Judgment. The public information officer shall be a member of this committee. The standing committee shall pass on all information to be disseminated to the public. Such committee will be fully responsible at all times to the full Board of Directors.

7. Javelin shall name a special independent outside counsel (hereinafter "Special Counsel") to the standing committee, which Special Counsel shall be satisfactory to the Commission. Special Counsel shall review the dissemination of all information to the public by Javelin or any of its subsidiaries, its officers and directors, and shall be authorized to take all reasonable steps to secure Javelin's compliance with the U. S. securities laws and shall make such inquiries as he deems necessary to see to it that this Judgment is being carried out. Special Counsel shall have no business or professional relationship with Javelin other than the performance of the functions set forth herein. Special Counsel shall notify the Commission and Javelin's Board of Directors in any respect in which he believes the Judgment is not being carried out and advise the Board as to the steps necessary to cure such failure.

8. Javelin shall instruct its general counsel to make himself available to the Special Counsel to the committee or to the Commission staff.

9. Javelin shall provide that Special Counsel to the Committee shall have complete access to all directors, officers, employees

of Javelin, to members of the committee, and to all relevant papers and records of the Company so as to enable him to carry out his function.

10. In the event Special Counsel is denied access to documents, Javelin personnel or any other material information, he shall notify the Board of Directors and the Commission.

11. In the event that the Commission brings suit in the United States, or otherwise initiates any action to enforce compliance with this Judgment, Special Counsel shall (a) make a demand on the company's Board of Directors to take, in Canada, whatever steps they deem appropriate under Canadian law to enforce compliance with such Judgment, (b) bring the matter to the attention of the authorities in Canada having jurisdiction for such action as may be appropriate and warranted under the circumstances.

12. Subject to the terms of paragraph 5, Javelin shall provide that neither John C. Doyle nor anyone else shall have responsibility or the right to disseminate information to the public on behalf of Javelin except upon the express request and prior approval of the compliance committee and Special Counsel.

13. If the Special Counsel refuses to carry out his function under the terms of this Judgment, or resigns, or is discharged or for any reason whatsoever ceases being Special Counsel, then Javelin shall appoint within a prompt and reasonable time another Special



Counsel satisfactory to the Commission. If Javelin shall not have proceeded with reasonable diligence in the selection of a new Special Counsel when required, the Commission may move the Court for appropriate action. Special Counsel shall not be discharged except on notice in writing to the Commission stating the reasons for such discharge prior to the discharge of the Special Counsel.

14. Where disclosures outside the United States by Javelin, its subsidiaries, affiliates or representatives are required by the laws of Canada or of any other country or by the rules and regulations of any regulatory authority or stock exchange having jurisdiction, Special Counsel to the Committee shall take such laws, rules or regulations into account in any review he may conduct.

15. The Commission may at any time apply to the Court for appropriate relief to enforce the terms of this Judgment.

16. This Judgment shall not be construed to limit the Commission's authority otherwise to enforce compliance with the securities laws of the United States."

8. When entering such judgment, Mr. Justice McMahon did so upon the purported consent in writing of the defendant Canadian Javelin in the form of a consent in writing signed by the said defendant on May 29th, 1974 pursuant to a resolution by the Board of Directors of the said defendant

Canadian Javelin on May 28th, 1974 authorizing such. The plaintiff prays leave to refer to the said consent and resolution at the trial herein.

9. Purporting to act pursuant to the said Judgment, a Compliance Committee was established and the defendant Eisenberg was appointed Special Counsel by the Board of Directors of Canadian Javelin.

10. By a Proxy Statement And Notice of Annual General Meeting of Shareholders to take place on December 17, 1974, which document was dated November 27th, 1974, a statement in relation to the said judgment was made. The plaintiff prays leave to refer to the said Proxy Statement at the trial herein. The said statement failed to report accurately the aforesaid judgment in that it:

- (a) failed to disclose that of the directors to be proposed by management, 40 per cent of such directors had to meet criteria set out in the judgment to the satisfaction of the defendant SEC;
- (b) failed to disclose that the said judgment required Canadian Javelin to designate a public information officer and that such appointment was not voluntary as the said statement inferred;



A28

- (c) failed to state that the "newly created standing committee" was a mandatory provision by reason of the said judgment and was not voluntary as the said statement inferred;
- (d) misled the shareholders by stating that such a committee was "fully responsible to Javelin's Board of Directors...." without also reporting that its members were required to be persons satisfactory to the defendant SEC;
- (e) failed to state that all dissemination of information by Canadian Javelin or its subsidiaries as, by the judgment, to be made public only through an information officer appointed with the approval of the SEC, not being an officer or director of Canadian Javelin whose officers and employees were prohibited by the said judgment from engaging in dissemination of information;
- (f) failed to state that the appointment of a Special Counsel satisfactory to the SEC was a mandatory provision of the said judgment; and
- (g) failed to attach a copy of the judgment and failed to include a text thereof.

A29

11. The plaintiff pleads that the resolution of the Board of Directors, Chapter and Section IV of the said judgment are illegal, ultra vires, null, void and of no effect insofar as they purport to bind Canadian Javelin, its officers, servants, directors, agents, successors and assigns upon the following grounds:

- (a) The aforesaid acts unlawfully interfered with the rights of shareholders to freely elect directors pursuant to the By-Laws of the defendant Canadian Javelin;
- (b) The aforesaid acts purported to amend the by-laws of Canadian Javelin in relation to qualification of directors by resolution when such could only be accomplished by by-law;
- (c) The aforesaid acts were not confirmed either by a special general meeting of shareholders called for such purpose nor by any meeting of shareholders at all;
- (d) The aforesaid acts effectively constituted a delegation and assignment of the powers and duties of the officers and directors of Canadian Javelin;
- (e) The aforesaid acts have introduced without by-law a control over the internal



A30

management of the affairs of Canadian Javelin without the sanction, knowledge, or consent of the shareholders of Canadian Javelin;

(f) The aforesaid acts constitute an unlawful fetter upon the discretionary exercise of the powers of the Directors of Canadian Javelin;

(g) The aforesaid acts impose a mandatory solicitation of proxies by management of Canadian Javelin;

(h) The aforesaid acts constitute an abdication of the rights of directors and officers of Canadian Javelin to a Committee, the membership of which is dictated by the defendants SEC and Eisenberg; and

(i) The aforesaid acts constitute a mandatory delegation of the powers and duties of directors and officers of Canadian Javelin to the defendant Eisenberg.

12. The plaintiff pleads the provisions of the Canada Corporations Act R.S.C., 1970 Chapter C-32 as amended

A31

and particularly sections 147, 94, 96, 90, 92, 95 and 108 thereof.

13. The plaintiff claims against the defendants:

- (a) a declaration that a Resolution of the Board of Directors of Canadian Javelin Limited dated May 28th, 1974 was and is illegal, null, void and ultra vires the powers of the said Board of Directors and Canadian Javelin Limited;
- (b) a declaration that a Certificate of Resolution and a Consent to Judgment dated May 28th, 1974 was and is illegal, null, void and ultra vires Canadian Javelin Limited;
- (c) a declaration that section IV of the Judgment of Mr. Justice McMahon made on July 17th, 1974 in an action in the United States District Court Southern District of New York between the defendant Securities And Exchange Commission as plaintiff and Canadian Javelin Limited, John C. Doyle and William M. Wismer as defendants is and was null, void, illegal and not binding upon Canadian Javelin Limited, its officers, servants, directors, shareholders, successors and assigns;
- (d) a declaration that the appointment of the defendant Meyer Eisenberg as Special Counsel pursuant to the said section of the said Judgment is illegal, null, void and not binding upon Canadian Javelin Limited, its officers, directors, servants, shareholders, successors and assigns, and a mandatory order requiring Canadian Javelin Limited to dissolve the position and appointment of Special Counsel;
- (e) a declaration that the appointment of a Compliance Committee pursuant to the said section of the said Judgment is illegal, null, void and not binding upon Canadian Javelin Limited, its officers, directors, servants, shareholders, successors and assigns and a mandatory order requiring Canadian Javelin Limited to dissolve the said Committee;
- (f) an interim, interlocutory and permanent order restraining and prohibiting Canadian Javelin Limited, its officers, servants, directors, shareholders and its co-defendants herein, their and each of their servants, agents, officers, directors, the Compliance Committee, its members, and any other person to whom notice of such order is received from operating, acting, functioning or continuing or purporting



A32

to continue to operate, act or function in accordance or in compliance with the said section IV of the said Judgment in any respect whatsoever and without exception;

- (g) his costs of this action; and
- (h) such further and other relief as to this Honourable Court may seem just.

The Plaintiff proposes that the trial of this action take place at the City of St. Catharines in the Judicial District of Niagara North.

DELIVERED this 3rd day of November, 1975 by  
MESSRS. MILLER, THOMSON, SEDGEWICK, LEWIS & HEALY, 21 King  
Street East, Toronto, Ontario, M5C 1A9, Solicitors for the  
Plaintiff.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT  
FILED COURT

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

- against -

CANADIAN JAVELIN LIMITED  
JOHN C. DOYLE  
WILLIAM M. WISMER

Defendants.

JULY 17, 1974  
SDNY

73 CIVIL 5074 LFM

JUDGMENT OF PERMANENT  
INJUNCTION AGAINST  
CANADIAN JAVELIN LIMITED  
AND STIPULATION AND  
CONSENT WITH RESPECT  
THERETO

Plaintiff Securities and Exchange Commission

("Commission"), having filed a Complaint for Injunction and ancillary relief in this matter and it appearing to the Court from the annexed Stipulation and Consent, which is attached hereto and made a part hereof, that the defendant Canadian Javelin Limited ("Javelin"), has admitted, solely for the purposes of this action and enforcement of this Judgment, the jurisdiction of this Court over it and over the subject matter of this action; and, without admitting or denying the allegations of the Complaint, and solely for the purposes of this action, has consented to the entry of a Final Judgment of Permanent Injunction enjoining said defendant from engaging in acts and practices in connection with the offer, purchase and sale of securities which constitute and would constitute violations of Sections 5 and 17(a) of the Securities Act of 1933, 15 U.S.C. 77e and 15 U.S.C. 77q(a), and Sections 10(b) and 13(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b) and 15 U.S.C. 78m(a), and Rule 10b-5, 17 CFR 240.10b-5, Rule 12b-20, 17 CFR 240.12b-20, Rule 13a-1, 17 CFR 240.13a-1, and Rule 13a-13, 17 CFR 240.13a-13, promulgated thereunder, and that plaintiff



Commission and Javelin have waived entry of findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure; and it further appearing therefore that this Court has jurisdiction over this defendant and over the subject matter of this action; the Court being fully advised in the premises and there being no just reason for any delay in the entry of this Judgment, it is hereby

I.

ORDERED, ADJUDGED AND DECREED that defendant Javelin, its officers, agents, servants, employees, directors, and those persons in active concert and participation with it, are permanently enjoined and restrained from directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of a national securities exchange

A. Obtaining money or property by making, or making, materially false and misleading statements or omitting to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, concerning but not limited to:

(1) . the financial condition of Javelin, its subsidiaries or affiliates;

(2) Javelin's right, capacity and ability to exploit any mineral discovery;

(3) any feasibility study related to Javelin's various business activities;

(4) the granting of mineral concessions to Javelin, its subsidiaries, or affiliates;

(5) the present and potential impact of legislation or governmental acts affecting Javelin's business activities;

(6) discussions with others to arrange for financing of Javelin's various projects;

(7) discussions with others to arrange for the sale of the products of Javelin's various projects;

(8) the terms, conditions and timeliness of Javelin's contracts or letters of intent;

(9) the anticipated time needed before production on Javelin's various activities can be meaningfully commenced;

(10) the size of Javelin's various projects and developments;

(11) the profitability of Javelin's various enterprises;

(12) the requisite financing needed and available for any project or activity;

(13) the business operations or capabilities of Javelin, its subsidiaries, or affiliates; and

(14) other items of similar purport and object;

B. Employing any device, scheme or artifice to defraud,

C. Engaging in any act, practice or course of business which operates or would operate as a fraud and deceit upon any person.

in connection with the offer, purchase, or sale of securities of Javelin, its subsidiaries or affiliates in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. 77q(a)



and Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and Rule 10b-5, 17 CFR 240.10b-5 promulgated thereunder.

II.

ORDERED, ADJUDGED AND DECREED that defendant Javelin, its officers, agents, servants, employees, directors, and those persons in active concert and participation with it, are permanently enjoined and restrained from directly or indirectly, by making use of the mails or the means and instruments of transportation and communication in interstate commerce, in the absence of applicable statutory exemptions;

(a) selling the securities of Javelin or any of its subsidiaries or affiliates through the use or medium of any prospectus or otherwise; or carrying or causing to be carried any security of Javelin or any of its subsidiaries or affiliates for the purpose of sale or delivery after sale, unless and until a registration statement is in effect with the Commission with respect to such securities; and

(b) offering to sell the securities of Javelin or any of its subsidiaries or affiliates through the use or medium of any prospectus or otherwise unless and until a registration statement has been filed with the Commission with respect to such securities,

in violation of Section 5 of the Securities Act of 1933, 15 U.S.C. 77e.

III.

ORDERED, ADJUDGED AND DECREED that defendant Javelin, its officers, agents, servants, employees, directors, and those

persons in active concert and participation with it, are permanently enjoined and restrained from directly or indirectly filing materially false and misleading annual and other periodic reports required to be filed with plaintiff Commission pursuant to Sections 13(a) and (b) and 15(d) of the Exchange Act.

IT IS FURTHER ORDERED that defendant Javelin, within 60 days of the date of this Order or at such other time as the plaintiff Commission may by order allow, will

(1) make all required filings with the Commission not heretofore made;

(2) make any amendments and supplements to its present filings with the Commission as required by law; and

(3) disseminate to all shareholders such information as is necessary to bring to their attention corrections, amendments or supplements provided for in (2) above and shall advise them fully concerning the present status of the affairs of the company.

#### IV.

IT IS FURTHER ORDERED that:

1. The Board of Directors by causing Javelin to enter into this Judgment shall be fully and continuously responsible for carrying it out.

2. Javelin will be subject to the continuing jurisdiction of the Court with respect to this Judgment.

3. The management of Javelin shall propose directors, vote their shares, and shall solicit proxies for the election of directors, at least 40 percent of whom shall consist of outside independent directors who shall meet the following criteria to



the satisfaction of the Commission:

- (a) persons of integrity;
- (b) persons not employed by Javelin or any of its subsidiaries or affiliates;
- (c) persons not under the control of Javelin or any of its subsidiaries or affiliates in consequence of any significant business interest;
- (d) persons who are not presently officers of Javelin;
- (e) persons not presently controlled by those owning the controlling voting interest in Javelin.

4. Javelin, its officers and directors, by action of the Board of Directors, shall designate and at all times maintain an agent in the United States authorized to accept service of civil or administrative process relating to the activities of Javelin, its subsidiaries and affiliates, served by or on behalf of the Commission including subpoenas and complaint. Javelin shall at all times advise the Commission of the name and address of such agent. Anyone so served shall retain any defenses he or it may have under the law to such action, except lack of proper service.

5. All dissemination of information by Javelin or any of its subsidiaries to the public whether by means of press releases, reports, letters to shareholders, filings with regulatory agencies, press conferences, meetings with security analysts, or otherwise shall be made only through a public information officer of Javelin designated within thirty days of this Judgment for such purpose. No other officer or employee of Javelin shall engage in any such dissemination of information.

6. Javelin shall establish within thirty days of this Judgment a standing compliance committee. A majority of the standing committee shall consist of independent Board members meeting the requirements of paragraph 3 of this Judgment. The

public information officer shall be a member of this committee. The standing committee shall pass on all information to be disseminated to the public. Such committee will be fully responsible at all times to the full Board of Directors.

7. Javelin shall name a special independent outside counsel (hereinafter "Special Counsel") to the standing committee, which Special Counsel shall be satisfactory to the Commission. Special Counsel shall review the dissemination of all information to the public by Javelin or any of its subsidiaries, its officers and directors, and shall be authorized to take all reasonable steps to secure Javelin's compliance with the U. S. securities laws and shall make such inquiries as he deems necessary to see to it that this Judgment is being carried out. Special Counsel shall have no business or professional relationship with Javelin other than the performance of the functions set forth herein. Special Counsel shall notify the Commission and Javelin's Board of Directors in any respect in which he believes the Judgment is not being carried out and advise the Board as to the steps necessary to cure such failure.

8. Javelin shall instruct its general counsel to make himself available to the Special Counsel to the committee or to the Commission staff.

9. Javelin shall provide that Special Counsel to the Committee shall have complete access to all directors, officers, employees of Javelin, to members of the committee, and to all relevant papers and records of the Company so as to enable him to carry out his function.

10. In the event Special Counsel is denied access to documents, Javelin personnel or any other material information, he shall notify the Board of Directors and the Commission.



11. In the event that the Commission brings suit in the United States, or otherwise initiates any action to enforce compliance with this Judgment, Special Counsel shall (a) make a demand on the company's Board of Directors to take, in Canada, whatever steps they deem appropriate under Canadian law to enforce compliance with such Judgment, (b) bring the matter to the attention of the authorities in Canada having jurisdiction for such action as may be appropriate and warranted under the circumstances.

12. Subject to the terms of paragraph 5, Javelin shall provide that neither John C. Doyle nor anyone else shall have responsibility or the right to disseminate information to the public on behalf of Javelin except upon the express request and prior approval of the compliance committee and Special Counsel.

13. If the Special Counsel refuses to carry out his function under the terms of this Judgment, or resigns, or is discharged or for any reason whatsoever ceases being Special Counsel, then Javelin shall appoint within a prompt and reasonable time another Special Counsel satisfactory to the Commission. If Javelin shall not have proceeded with reasonable diligence in the selection of a new Special Counsel when required, the Commission may move the Court for appropriate action. Special Counsel shall not be discharged except on notice in writing to the Commission stating the reasons for such discharge prior to the discharge of the Special Counsel.

14. Where disclosures outside the United States by Javelin, its subsidiaries, affiliates or representatives are required by the laws of Canada or of any other country or by the rules and regulations of any regulatory authority or stock exchange having jurisdiction, Special Counsel to the committee

A41

shall take such laws, rules or regulations into account in any review he may conduct.

15. The Commission may at any time apply to the Court for appropriate relief to enforce the terms of this Judgment.

16. This Judgment shall not be construed to limit the Commission's authority otherwise to enforce compliance with the securities laws of the United States.

Dated: New York, New York  
July 17, 1974

s/ David F. McMahon  
United States District Judge

JUDGMENT ENTERED

A/  
Clerk



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

- against -

CANADIAN JAVELIN LIMITED  
JOHN C. DOYLE  
WILLIAM M. WISMER

Defendants.

73 CIVIL 5074

CONSENT

The defendant, Canadian Javelin Limited ("Javelin"),  
hereby consents and agrees as follows:

I.

The defendant, Javelin, for purposes of this action only and the enforcement of this Judgment enters a general appearance, acknowledges receipt of the Complaint filed herein and admits the jurisdiction of this Court over it and over the subject matter of this action.

II.

The defendant, Javelin, consents that this Court, forthwith and without further notice, may enter the foregoing attached Judgment of Permanent Injunction enjoining it from engaging in acts and practices in connection with the offer, purchase and sale of securities which constitute or would constitute violations of Sections 5 and 17(a) of the Securities Act of 1933, 15 U.S.C. 77e and 77q(a), Sections 10(b) and 13(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b) and

78m(a), and Rules 10b-5, 12b-20, 13a-1 and 13a-13, 17 CFR 240.10b-5, 17 CFR 240.12b-20, 17 CFR 240.13a-1 and 17 CFR 240.13a-13, promulgated thereunder.

A43

III.

The defendant, Javelin, in consenting to the entry of the foregoing attached Judgment of Permanent Injunction, does so without admitting or denying any of the allegations made by the plaintiff Securities and Exchange Commission in its complaint.

IV.

The defendant, Javelin, waives entry of findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure.

V.

The defendant, Javelin, states that no tender, offer, promise or threat of any kind whatsoever has been made by the plaintiff Securities and Exchange Commission, or any member, officer, agent or representative thereof in consideration for this Consent.

Dated: May 25th, 1974

CANADIAN JAVELIN LIMITED

*Per Javelin*  
*via fax to notary public*

SWORN TO at MONTREAL, on this 29th day of MAY, 1974

*Gerard Ducharme*  
Gerard Ducharme  
Notary Public



## CERTIFICATE OF RESOLUTION

I, P.J. DE SANTIS, Secretary of CANADIAN JAVELIN LIMITED, a Canadian corporation, hereby certify that the resolution attached hereto is a true and complete copy of a resolution adopted by the Board of Directors of Canadian Javelin Limited at a meeting duly held on MAY 28<sup>th</sup> 1974 at which a quorum was present and acting throughout and that said resolution has not in any way been rescinded or modified and is in full force and effect as of the date hereof.

IN WITNESS WHEREOF, I have signed the Certificate as Secretary of the corporation and affixed the seal of the corporation on this 29<sup>th</sup> day of MAY, 1974.

P.J. De Santis  
Secretary

SWORN TO at MONTREAL, on this 29th day of MAY, 1974

Gerard Ducharme  
Notary Public

RESOLVED, that P. J. N. SANTIS, Secretary of CANADIAN JAVELIN LIMITED, a Canadian corporation, be and he hereby is authorized and directed on behalf of CANADIAN JAVELIN LIMITED to consent to the entry of a Judgment of a Permanent Injunction in substantially the form annexed hereto in an action brought by the United States SECURITIES AND EXCHANGE COMMISSION, which Complaint alleges that CANADIAN JAVELIN LIMITED violated Sections 5 and 17(a) of the Securities Act of 1933, 15 U.S.C. 77e and 15 U.S.C. 77c(a), and Sections 10(b) and 13(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b) and 15 U.S.C. 78m(a), and Rules 10b-5, 17 CFR 240.10b-5 and 12b-20, 17 CFR 240.12b-20, 13a-1, 17 CFR 240.13a-1, and 13a-13, 17 CFR 240.13a-13 promulgated thereunder;

FURTHER RESOLVED, that the Secretary of CANADIAN JAVELIN LIMITED, a Canadian corporation, be and hereby is authorized and directed on behalf of CANADIAN JAVELIN LIMITED to designate an agent in the United States, who shall be authorized to accept service of civil or administrative process relating to the activities of the company, its subsidiaries and affiliates served by or on behalf of the SECURITIES AND EXCHANGE COMMISSION of the United States, including subpoenas and complaints;

FURTHER RESOLVED, that the provisions of ordering paragraph 14, subparagraphs 3 through 5 of the Judgment of Permanent Injunction Against Canadian Javelin Limited and Stipulation and Consent With Respect Thereto shall be complied with by the management upon the aforesaid Judgment becoming effective.

B. J. N. Santis  
Secretary

CANADIAN JAVELIN LIMITED

DATED: May 29<sup>th</sup> 1974

SWORN TO at MONTREAL, on this 29th day of MAY, 1974

Gerard Ducharme

Gerard Ducharme  
Notary Public



December 19, 1975

Two granted following oral argument. See long-form

made this date on the

of the following findings

fact and conclusions of law:

Smith has commenced an action in

requesting Canadian Court to declare

of our injunctive decree of July 17, 1974

Civ. 5074-LFM null and void and not

for Canadian Javelin, its officers etc,

Our decree was entered in consent of

Canadian Javelin, and Canadian Javelin must

defend the decree against Collateral

in the Canadian Court. Since we

jurisdiction, it is essential to direct

Canadian Javelin to appoint Eisenberg as its

to defend the decree against Collateral

and to pay him reasonable fees and

Eisenberg was appointed Special Counsel

board of directors of Canadian Javelin

uniquely qualified to defend the decree,

matter is urgent since the Canadian

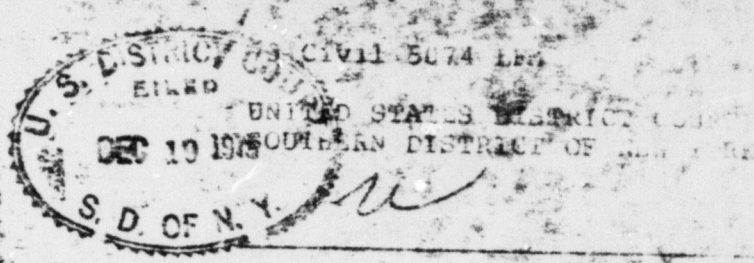
will be before the Court on Monday,

Dec 22, 1975.

So ordered.

*Lord & Mac Miller*

*U.S.D.*



SECURITIES AND EXCHANGE COMMISSION

Plaintiff

MICROFILM

DE CANADIAN JAVELIN LIMITED  
JOHN J. DOYLE  
WILLIAM M. WISMER,

Defendants.

MOTION OF SECURITIES AND EXCHANGE  
COMMISSION TO REQUIRE DEFENDANT  
TO APPOINT COUNSEL AND TO PAY  
COUNSEL'S FEES AND EXPENSES

SECURITIES AND EXCHANGE COMMISSION  
500 North Capitol Street  
Washington, D.C. 20549  
Telephone: (202) 755-1476

EXHIBIT B - ENDORSED DECISION OF DISTRICT COURT

A46

SECURITIES EXCHANGE COMMISSION MEMORANDUM OF POINTS AND AUTHORITIES  
 (Filed December 19, 1975)  
 UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION	:	
	:	
Plaintiff,	:	73 CIVIL 5074 LFM
	:	
- against -	:	MEMORANDUM OF POINTS AND
	:	AUTHORITIES IN SUPPORT
CANADIAN JAVELIN LIMITED	:	OF SECURITIES AND EXCHANGE
JOHN C. DOYLE	:	COMMISSION MOTION FOR AN
WILLIAM M. WISMER	:	ORDER TO APPOINT COUNSEL
	:	AND TO PAY COUNSEL'S
Defendants.	:	FEES AND EXPENSES
	:	
	:	

This memorandum is submitted by the Securities and Exchange Commission in support of its motion for An Order to Require Defendant to Appoint Counsel and to Pay Counsel's Fees and Expenses.

The motion is made in reliance on the Judgement of Permanent Injunction against Canadian Javelin Limited entered by the Court on July 17, 1974.

In addition to injunctive relief, that order provided among other things that:

- "1. The Board of Directors by causing Javelin to enter into this Judgment shall be fully and continuously responsible for carrying it out."
- "2. Javelin will be subject to the continuing jurisdiction of the Court with respect to this Judgment."
- "4. Javelin, its officers and directors, by action of the Board of Directors, shall designate and at all times maintain an agent in the United States authorized to accept service of civil or administrative process relating to the activities of Javelin, its subsidiaries and affiliates, served by or on behalf of the Commission including



"subpoenas and complaint. Javelin shall at all times advise the Commission of the name and address of such agent. Anyone so served shall retain any defenses he or it may have under the law to such action, except lack of proper service."

"7. Javelin shall name a special independent outside counsel (hereinafter "Special Counsel") to the standing committee, which Special Counsel shall be satisfactory to the Commission. Special Counsel shall review the dissemination of all information to the public by Javelin or any of its subsidiaries, its officers and directors, and shall be authorized to take all reasonable steps to secure Javelin's compliance with the U. S. securities laws and shall make such inquiries as he deems necessary to see to it that this Judgment is being carried out."

"15. The Commission may at any time apply to the Court for appropriate relief to enforce the terms of this Judgment."

Furthermore, the provisions of the Order of Permanent Injunction generally, apply not only to Canadian Javelin Limited, but to its officers and directors as well, and Section IV (1) specifically imposes a continuous responsibility on the Board of Directors to carry out the Judgment.

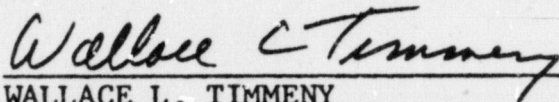
The plaintiff in the Canadian law suit is a director of Canadian Javelin Limited who through his law suit seeks to effectively nullify a major portion of the Court Decree in the matter.

The law suit filed in Canada seeks relief which would provide that Canadian Javelin Limited acted beyond its authority in consenting to the provisions of Section IV of the Judgment of

Permanent Injunction against Canadian Javelin Limited entered by this Court. Special Counsel indicates he has been informed it is probable that Canadian Javelin Limited will not actively defend the allegations of the Canadian law suit.

The Securities and Exchange Commission files the attached motion based upon the above cited provisions of this Court's order and pursuant to the Court's inherent authority to enforce the provisions of that decree.

Respectfully submitted,



WALLACE L. TIMMENY

Attorney

U. S. Securities and Exchange  
Commission

500 North Capitol Street  
Washington, D. C. 20549



MOTION BY CANADIAN JAVELIN FOR STAY (Filed December 19, 1975)  
 UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

-----X

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

: 73 Civ. 5074  
 LFM

- against -

:

CANADIAN JAVELIN LIMITED, JOHN C.  
 DOYLE and WILLIAM M. WISMER,

:

MOTION FOR STAY

Defendants.

-----X

Defendant, Canadian Javelin Limited, pursuant to Rule 8 of the Federal Rules of Appellate Procedure, and 28 U.S.C. Section 1651, moves this court for an order staying its judgment and order entered herein on December 19, 1975, pending appeal, and during the pendency of an appeal and tenders herewith its Notice of Appeal which will be filed herein immediately hereafter. The prospective appellant represents to the court that it has, in the opinion of counsel, good and right cause to appeal the order of the court, and that such appeal will be pursued in good faith and with due diligence.

Dated: December 19, 1975.

DIAMOND & GOLOMB, P.C.

By

IRVING L. GOLOMB, a member of the  
 firm

Attorneys for Defendant Canadian Javelin  
 Limited

Office & P. O. Address  
 99 Park Avenue  
 New York, N. Y. 10016  
 (212) 687-7550

AFFIDAVIT OF IRVING L. GOLOMB IN OPPOSITION

(Dated December 19, 1975)

A51

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

73 Civ. 5074  
LFM

- against -

CANADIAN JAVELIN LIMITED, JOHN C.  
DOYLE and WILLIAM M. WISMER,

AFFIDAVIT IN OPPO-  
SITION TO MOTION

Defendants. :

-----X

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS.:

IRVING L. GOLOMB, being duly sworn, deposes and says:

1. I am a member of the firm of DIAMOND & GOLOMB, P.C., attorneys for defendant Canadian Javelin Limited. I make this affidavit in opposition to the motion of the Securities and Exchange Commission (S.E.C.) for an order requiring defendant Canadian Javelin Limited (Javelin) to "appoint counsel and to pay counsel fees and expenses", as set forth in the order to show cause.

2. Although the S.E.C. has had the legal papers in the Ontario action on hand for at least two weeks, it has not served its motion papers upon me until less than two days remained before they are made returnable. I am currently under an order of Special Term, Part I of the Supreme Court, County of New York, to appear in depositions from day to day in an action entitled "Catalogue Service of Westchester, Inc. v. Wise, et als", where I have been engaged almost all day, December 17th, and am again scheduled to be all day, the 18th. When served at 4:30 P. M.



with the motion papers herein by Mr. Timmeny of the S.E.C., I advised him of the problem of shortness of time and that it may not be possible to prepare all necessary opposing papers in time for the Friday afternoon court appearance. An effort to bring on this motion with unseemly haste on so short a notice by serving a foreign corporation through an attorney in New York, without an opportunity adequately to consult officers and directors to gather evidence, or to meet with Company's Canadian counsel, raises sharp questions of deprivation of procedural and substantive process. The time is indeed so short that the company has hardly had an opportunity to decide who should represent it on the instant motion. Although I had been designated its agent for purposes of receipt of process in New York, that did not carry with it the authority to act. It is respectfully submitted that the facts hereinafter shown should warrant the denial of the instant motion on the submitted papers. If the Court should not so deny this motion, it is respectfully requested that it be adjourned and set down for a hearing, at which time a cross-motion would be brought on to modify the consent judgment so as to eliminate certain areas of unworkability and questionable validity. A first draft of such a motion has already been prepared, but the papers have not proceeded to completion. I am advised that during the last week, Javelin's Washington counsel, Senator Marlow Cook, has been in touch with Stanley Sporken of the S.E.C. who is Mr. Timmeny's chief and occupies adjacent offices. The purpose of the contact with the S.E.C. was to procure an audience and attempt discussions which might achieve

solutions to the problems of compliance by a Canadian company with the United States Securities laws and reconciliation of foreign law with domestic. While these efforts were in process, the instant motion has been brought on. It is intended to continue such discussions. There is no intention whatever on the part of Javelin to violate the injunction or to attack it, as can be seen from the fact that we had commenced the preparation of a motion for modification of that judgment which, when completed, is intended to be presented to this very court.

3. The "motion" annexed to the order to show cause requests the Court to require Javelin to appoint one Meyer Eisenberg as counsel to appear and defend Javelin in the action brought by Harold W. M. Smith in Ontario, Canada.

4. The Eisenberg supporting affidavit states that on December 3, 1975, Mr. Eisenberg received a copy of the papers in the Smith lawsuit. It further states that he informed Javelin's secretary, Mr. Mallin, that he had taken steps to retain Ontario counsel, that he had requested the company to pay the costs of such defense, and that Javelin had advised, through its Canadian counsel, that it had "not yet reached any conclusion as to whether it will reimburse us (the Eisenberg firm) for legal and other expenses incurred in connection with the defense of the Ontario action".

5. It appears that the Eisenberg affidavit concerns itself solely with Mr. Eisenberg defending himself in the



Ontario action, where he is named as defendant, and being indemnified for such defense, whereas the S.E.C. motion instead requests that Javelin appoint Eisenberg to represent the company in that action and pay his fees and expenses.

A54

6. Although the S.E.C.'s motion papers allege that Mr. Eisenberg "is uniquely qualified to represent Canadian Javelin in the Ontario Court", I am advised that, under Canadian practice, it is neither proper nor customary for Canadian courts to permit non-Canadian attorneys to practice therein. It is thus most unlikely that he be able to act for Javelin in Ontario, even were he otherwise qualified.

7. Mr. Eisenberg's experience as a securities lawyer in the United States is not sufficient to qualify him to practice Canada corporate law and to litigate in Canada. The motion papers do not sustain the burden of showing that he is adequately qualified, can practice in Canada, has adequate familiarity with its laws, or can be expected to furnish proper representation in Canada for Javelin. The reverse must be presumed since, by training and experience, he is a specialist in U.S. securities matters, with offices only in the United States.

8. Since Mr. Eisenberg is himself a defendant in the Ontario suit, he will have every opportunity to present his views and his position to that court on his own behalf and does not further need the authority to represent Javelin in order to have a forum for his position. Were this Court to direct Javelin to appoint Mr. Eisenberg to represent it in the Ontario action, it would play directly into the hands of plaintiff Smith

in that action and lend support to his contention that the prerogatives of the Board of Directors of Javelin in selecting its own counsel have been usurped.

A55

9. Javelin is a company organized and existing under the Canada Companies' Act, with head offices in Montreal, and concerned with complying with the laws of both Canada and the United States. In the latter connection, it has consistently performed the terms of the consent judgment and complied with the procedures for which it provides, notwithstanding sharp and severe questions in Canada as to whether it has improperly abdicated directorial duties and unlawfully purported to delegate non-delegable obligations.

10. On the other hand, Mr. Eisenberg, as Special Counsel, appointed by the directors of Javelin under the consent judgment herein, is charged with the duties of helping to supervise compliance with U. S. securities laws only. He has not been assigned and indeed lacks any function in relation to Canada's laws.

11. Mr. Eisenberg could not therefore properly represent Javelin in a situation involving the laws of Canada as well as the United States since he is concerned only with the latter, regardless of Javelin's problems in complying with both.

12. Moreover, Mr. Eisenberg is in a possible conflict of interest situation because a significant part of the entire problem area involved under Section IV of the judgment has arisen in connection with the manner of performance by him of his duties as special counsel. He is part of the problems and may be a cause as well. Thus, for example, delays in prompt



reporting by the company may be found in the fact that: Since A56  
December 8th, Mr. Eisenberg has not responded to me regarding  
Javelin's proposed Nine Month Report, so that it has not been  
possible to send it out to shareholders; in recent weeks, he  
held back a 10-Q Report for some 10 days; in the same period, the  
process of attempting to issue a release announcing Javelin's  
receipt of \$18,600,000 of bonds from the Government of Panama  
encountered so much comment and so many questions that no release  
has finally been issued, with consequent complaint by stockhold-  
ers.

13. When, after protracted negotiations, Javelin con-  
sented to the entry of the judgment herein, the limited functions  
of special counsel were specifically set forth in paragraph 7 of  
the judgment. This reads in part: "Special counsel shall have  
no business or professional relationship with Javelin other than  
the performance of the functions set forth herein". Those  
functions are to "review the dissemination of all information to  
the public by Javelin...shall be authorized to take all reason-  
able steps to secure Javelin's compliance with the United States  
Securities laws and shall make such inquiries as he deems neces-  
sary to see to it that this judgment is being carried out...".  
"Special counsel shall notify the Commission and Javelin's Board  
of Directors in any respect in which he believes the judgment is  
not being carried out and advise the Board as to the steps neces-  
sary to cure such failure".

The proposed expansion of Mr. Eisenberg's functions  
with respect to U. S. securities matters to interference with  
the company's activities in Canada would violate the restrictions

of the judgment. It would also violate the laws of both the A57  
United States and Canada by depriving Javelin's directors of  
the right to select company counsel. There is no requirement in  
the consent judgment that Javelin defend that judgment against  
attack in Canada. The judgment is as broad as the consent and  
as narrow. The duties of special counsel are delineated in the  
judgment.

14. Further, Mr. Eisenberg has a financial interest  
in the perpetuation of his position as special counsel, as well  
as a professional interest in not being criticized for his per-  
formance. This creates a conflict of interest position vis-a-vis  
Javelin's need to comply with Canadian law, if the latter should  
require Javelin's directors to refrain from delegating their  
duties to a Committee and Special Counsel, acting as a pre-censor  
and pre-viewer of the Board's acts.

15. Having already proceeded to retain Mr. Comish as  
his counsel, Mr. Eisenberg assumed the attendant risks and re-  
sponsibilities for payment. Mr. Comish must correspondingly be  
deemed to have agreed to look to Mr. Eisenberg and not to Javelin  
for compensation.

16. If Javelin were directed to retain Mr. Eisenberg  
and Mr. Eisenberg retained Mr. Comish to represent Javelin, the  
problem of improper delegation of the Board's prerogatives would  
be doubly compounded and a total stranger to Javelin would be in  
the anomalous posture of purporting to assert the position of a  
client to whom he is a complete and utter stranger.

17. On December 10, Mr. Eisenberg advised me he was



considering retaining the same counsel as the S.E.C. to defend A58 the Ontario action. I have just been advised that the attorney representing him and the S.E.C. in Ontario is a Mr. Comish. Javelin should not be placed in the position of being required to pay for S.E.C. counsel in the guise of paying for Mr. Eisenberg's counsel.

18. When I met Mr. Eisenberg in Washington on December 10, he told me that he was asking Javelin to defray the cost of his counsel. He did not tell me that he was joining in an application of the S.E.C. to have him appointed as counsel for Javelin in the Ontario action. I have been advised by Julius Mallin, Javelin's secretary, that Mr. Eisenberg has requested him to do what he could to persuade Mr. Smith to discontinue the action against Mr. Eisenberg. It now appears that Mr. Eisenberg, while attempting to remove himself as a defendant, was attempting to assume a new role as counsel in the Ontario suit.

19. Mr. Eisenberg states nothing to show that Javelin will not properly defend the consent judgment in Ontario, claiming only that the company was considering what action to take, that Ontario counsel retained by the company had not yet been instructed as to what their position should be and that Mr. Mallin had speculated on what the instructions to counsel might be. I am advised that the company will not disavow its consent to the judgment or attack the judgment, but intends to represent to the Ontario court its desire to comply with the laws of both United States and Canadian jurisdictions. Day, Wilson and Campbell are a well-established, reputable firm in Toronto who may be expected to perform their tasks for the company diligent-

ly and properly.

A59

20. The need for Javelin to be represented by an attorney of its own choice in the Ontario suit is further emphasized by the development of conflicts between Mr. Eisenberg's and Javelin's concepts of his duties as special counsel. It appears that a certain abrasiveness has evolved related to his insistence upon passing on the wisdom rather than the legality of matters of proposed releases and filing (the function of the directors and company counsel), his pre-censorship rather than review of the compliance officer's dissemination of information, his delays in acting and even his erroneous unprovoked statement to me on December 10 that he cannot be discharged without the consent of the S.E.C.

21. The Company requires a degree of flexibility in evolving its position in the Ontario suit, with due and careful consideration of what should be said in the light of both Canadian and American law and with due respect for the need to comply with both. The Eisenberg position clearly ignores the Canadian problem.

22. I have just learnt that Mr. Comish has expressed the position that the S.E.C. will not appear or take any part in the Ontario suit. In that event, the instant motion would become the indirect means by which, through utilizing Mr. Eisenberg, the S.E.C. position would still be asserted therein but with Javelin being caused to pay for S.E.C. counsel. It may be noted in passing that Mr. Smith was not a director of Javelin at the time of the consent judgment but was appointed thereafter as an independent director, approved by the S.E.C.



23. If a precedent should be set by granting the relief requested by the instant motion and Mr. Eisenberg appointed as counsel against the wishes of the Board of Directors to represent the company in the Ontario suit, it may prove impossible to find directors in Canada willing to act as independent directors under the provisions of the judgment. This would be so because it could well be argued that they had been deprived and could expect to be continued to be deprived of independence of judgment. The company would thus be prevented from functioning under the Canadian law, it could be deprived of the possibility of finding qualified directors, and the judgment herein would be frustrated as well.

24. To grant this motion would be to place this court in the unseemly and intolerable position of being the continuing supervisor of the litigative acts of a participant in foreign litigation. There is no guaranty that the Canadian court would respect decisions made by a United States court - appointed director of the case. But assuming that Mr. Eisenberg were appointed as counsel, it must be presumed that, during the course of the litigation, differences may ensue between him and the company as to the meaning of the judgment, the obligations of the company thereunder, the facts and the effects of the facts occurring post-judgment and others. A simple example is the above-described expression of views by Mr. Eisenberg and your affiant on the matter of right to discharge special counsel. When such differences occur, whose view is to be advanced as to the


company's position in the litigation in Canada? At the very least, it must be expected that repeated applications to this court will ensue, burdening it unduly. It would become impossible to make on-the-spot decisions necessary in the litigation. A61

25. Although many other policy considerations militate against this court's becoming enmeshed in foreign litigation, the following comments will complete Javelin's presentation at this juncture. This court certainly would not delegate to Mr. Eisenberg the right to determine that the judgment should be interpreted as he alone decides or that actions taken by him in the course of company compliance were proper. Yet, if disappointed, Mr. Eisenberg would be the only one whose view could be expected to be presented. Although Javelin is the real principal who would be affected by the decision in Ontario, it would be denied the right to be heard and would be denied counsel of its own choosing. This would be an unconstitutional deprivation of due process by denying the company, as the real party in interest, the right to effectively participate in litigation by its own attorneys.

WHEREFORE, it is respectfully requested that the instant motion be in all respects denied upon the papers herein but if the court should not so rule, that the motion be adjourned and a hearing had, and the motion then be denied.

Sworn to before me this  
19th day of December, 1975.

IRVING L. GOLOMB



AARON M. DIAMOND  
Notary Public, State of New York



CANADIAN JAVELIN'S MEMORANDUM OF POINTS IN OPPOSITION  
(Filed December 19, 1975)

A62

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
SECURITIES AND EXCHANGE COMMISSION,

73 Civ. 5074  
LFM

Plaintiff, :

-against-

CANADIAN JAVELIN LIMITED, JOHN C.  
DOYLE and WILLIAM M. WISMER,

Defendants.

MEMORANDUM OF  
POINTS OF DEFEND-  
:ANT CANADIAN JAV-  
ELIN LIMITED IN  
OPPOSITION TO MO-  
TION.

-----X  
This Memorandum is submitted by defendant  
Canadian Javelin Limited in opposition to  
the motion of the S.E.C. to require defend-  
ant to appoint counsel and pay counsel's  
fees and expenses.

1. Defendant, Canadian Javelin Limited is a Canadian corporation. It cannot ignore the impact of the law of Canada which governs its directors and the performance of their duties as such.
2. Javelin has selected well qualified Canadian counsel to represent it in the Ontario suit.
3. As one of the defendants in the Ontario suit, Mr. Eisenberg has an ample opportunity to express his position therein.
4. Mr. Eisenberg's function as special counsel is expressly set out and de-limited by the consent judgment which provides in part:

"Special counsel shall have no business or professional relationship with Javelin other than the performance of the functions set forth herein...to review the dissemination of all information to the public by Javelin...shall be authorized to take all reasonable steps to secure Javelin's compliance with the United States Securities laws and shall make such inquiries as he deems necessary to see to it that

this judgment is being carried out..."

The relief requested by the instant motion would therefore violate that judgment.

5. Mr. Eisenberg is not qualified to adequately represent Javelin in Canada.

6. Mr. Eisenberg's function and his concept of his role are part of the problems raised in the Ontario suit.

7. Mr. Eisenberg is in a position of conflict of interest because of his need to defend his role as special counsel and his financial interest in remaining such.

8. It is axiomatic that a corporation's Board of Directors cannot be deprived of its right and duty to select its own counsel.

9. A direction to Javelin to appoint Mr. Eisenberg as counsel in the Ontario suit would be an unconstitutional deprivation of due process by denying the company the right to participate actively in that litigation in defense of its interests and by depriving it of right to counsel.

DIAMOND & GOLOMB, P.C.  
Attorneys for Defendant Canadian  
Javelin Limited  
Office & P. O. Address  
99 Park Avenue  
New York, N. Y. 10016  
(212) 687-7550



ORDER OF DISTRICT COURT (Filed December 19, 1975)  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

A64

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CANADIAN JAVELIN LIMITED  
JOHN C. DOYLE  
WILLIAM M. WISMER,

Defendants.

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: 73 Civil 5074 LFM  
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: ORDER  
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Whereas plaintiff Securities and Exchange Commission  
Meyer Eisenberg  
moved this Court to require Canadian Javelin Limited to appoint/  
counsel and to pay counsel's fees and expenses in the matter  
of Harold W.H. Smith v. Canadian Javelin Limited, Securities  
and Exchange Commission, and Meyer Eisenberg, an action brought  
by plaintiff Smith in the Supreme Court of Ontario;

Whereas plaintiff's motion having been amended to author-  
ize Eisenberg to retain qualified Canadian counsel to represent  
Canadian Javelin in the matter pending before the Supreme Court  
in Ontario, Canada, and upon the oral arguments made by the  
parties during a hearing before this Court on December 19, 1975;  
and upon all the papers and proceedings herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Canadian  
Javelin Limited appoint Meyer Eisenberg, Esq., to appear and  
defend on behalf of Canadian Javelin Limited, and to protect  
the subject matter of this case, and to retain Canadian  
counsel qualified to represent Canadian Javelin Limited in  
connection with Smith v. Canadian Javelin Limited, et al.;

IT IS FURTHER ORDERED that Canadian Javelin Limited pay  
IN AN AMOUNT TO BE FIXED BY THIS COURT  
fees and expenses of Eisenberg and his counsel in connection  
with the defense of the case pending in the Supreme Court of  
Ontario.

AND IT IS FURTHER ORDERED that this Court shall retain  
jurisdiction of this matter for all purposes.

5/ LFM

United States District Judge

Dated:

DEC 19, 1979 (sic)

JUDGMENT ENTERED 12-23-75

H RAYMOND F BOURGARNOT  
CLERK



NOTICE OF APPEAL (Dated December 19, 1975)

A66

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
SECURITIES AND EXCHANGE COMMISSION,

73 Civ. 5074

Plaintiff,

: LFM

-against-

CANADIAN JAVELIN LIMITED, JOHN C.  
DOYLE and WILLIAM M. WISMER,

: NOTICE OF APPEAL

:  
Defendants.  
-----X

NOTICE is hereby given that CANADIAN JAVELIN LIMITED, a defendant herein, hereby appeals to the United States Court of Appeals for the Second Circuit from the order of the Hon. Lloyd F. MacMahon, District Judge, entering certain orders to this defendant entered in this action on the 19th day of December, 1975.

Dated: December 19, 1975.

DIAMOND & GOLOMB, P.C.

By 

IRVING L. GOLOMB, a member of  
the firm

Attorneys for Defendant Canadian  
Javelin Limited

Office & P. O. Address

99 Park Avenue

New York, N.Y. 10016

(212) 687-7550

TO: CLERK, USCA.

SECURITIES & EXCHANGE COMMISSION  
500 N. CAPITAL ST  
WASH DC

A 201 Affidavit of Service by Mail  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

LUTZ APPELLATE PRINTERS, INC.

SECURITIES EXCHANGE COMMISSION,

- against -  
CANADIAN JAVELIN,

Index No.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, Velma N. Howe being duly sworn,  
depose and say that deponent is not a party to the action, is over 18 years of age and resides at  
298 Macon Street, Brooklyn, New York 11216  
That on the 27th day of February 19 76, deponent served the annexed

~~Brief~~ *Appx* upon ~~XX~~ Securities Exchange Commission attorney(s) for  
SEC in this action, at Securities Exchange Commission 500 North Capital  
Street, Washington, D.C.

the address designated by said attorney(s) for that  
purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a  
Post Office Official Depository under the exclusive care and custody of the United States Post Office  
Department, within the State of New York.

Sworn to before me, this 27th  
day of February 19 76

*Robert T. Brin*

*Velma N. Howe*

VELMA N. HOWE

ROBERT T. BRIN  
NOTARY PUBLIC, State of New York  
No. 31-0418950  
Qualified in New York County  
Commission Expires March 30, 1977